

PUBLIC ACTS, 1999

CHAPTER NO. 481

HOUSE BILL NO. 1032

By Representatives Hargrove, Head, Lewis, Sands, Walker, Fraley

Substituted for: Senate Bill No. 1109

By Senators Cooper, Rochelle, Ramsey

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 52; Title 7, Chapter 59 and Title 65, Chapter 25, relative to authorization of providers of electric services to provide cable television, internet, and related services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 52, is amended by adding the following as a new, appropriately designated part:

Section 7-52-601. (a) Each municipality operating an electric plant described in Section 7-52-401 has the power and is authorized within its service area, under the provisions of this act and on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant (herein sometimes referred to as "governing board"), to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant, or equipment for the provision of cable service, two-way video transmission, video programming, internet services, or any other like system, plant, or equipment within and/or without the corporate or county limits of such municipality, and, with the consent of such other municipality, within the corporate or county limits of any other municipality. A municipality may only provide cable service, two-way video transmission, video programming, internet services or other like service through its board or supervisory body having responsibility for the municipality's electric plant. A municipality providing any of the services authorized by this section may not dispose of all or substantially all of the system, plant, and equipment used to provide such services except upon compliance with the procedures set forth in Section 7-52-132.

(b) The services permitted by this part do not include telephone, telegraph, and telecommunications services permitted under Part 4 of this chapter.

(c) Notwithstanding the foregoing, a municipality shall not have any power or authority under subsection (a) of this section in any area where a privately-held cable television operator is providing cable service over a cable system and in total serves 6,000 or fewer subscribers over one or more cable systems.

(d) Notwithstanding the foregoing, a municipality shall not have any power or authority under subsection (a) of this section in any area of any existing telephone cooperative that has been providing cable service for not less than ten (10) years under the authority of the Federal Communications Commission.

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Section 7-52-602. To provide the services authorized under this part, the governing board of the municipal electric system shall comply with the following procedure:

(a) Upon the approval and at the direction of the governing board, the municipal electric system shall file a detailed business plan with the office of the comptroller of the State which includes a three year cost benefit analysis and which identifies and discloses the total projected direct cost and indirect cost of and revenues to be derived from providing the proposed services. The plan shall also include a description of the quality and level of services to be provided, pro forma financial statements, a detailed financing plan, marketing plan, rate structure and any other information requested by the Director of the Division of Local Finance.

(b) After review of the plan, the comptroller shall provide a written analysis of the feasibility of the proposed business plan to the chief legislative body of the municipality in which the municipal electric is located and the governing board within sixty (60) days; provided, however, the calculation of the time to file the comptroller's written analysis shall not commence until the business plan is complete. Upon expiration of said sixty (60) day period, the governing board may proceed without the written analysis of the comptroller.

(c) If the governing board determines to proceed, it shall publish in a newspaper of general circulation within that area a notice of its intent to proceed with the offering of additional services. The notice shall include a general description of the business plan and a summary of the governing board's findings on such plan. The notice shall also specify a date on which the governing board shall conduct a public hearing on the provision of such services.

(d) The governing board shall conduct a public hearing on the provision of such services. No sooner than fourteen (14) days after such public hearing, the governing board may consider authorizing the provision of additional services. A municipal electric system may provide additional services only after approval by a two-thirds (2/3) majority vote of the chief legislative body of the municipality in which the municipal election system is located or by a public referendum held pursuant to subsection (e) of this section.

(e) Upon a majority vote by the chief legislative body of the municipality in which the municipal electric system is located that a public referendum should be held on the question of whether the municipal electric system may provide additional services, the chief legislative body of such municipality may direct the county election commission to hold a referendum on such question. In order for the question to be placed on the ballot, the chief legislative body shall so direct not less than sixty (60) days before a regular general election. Upon receipt of such direction from the chief legislative body, the county election commission shall place the question on the ballot. The referendum shall only be held in conjunction with a regular general election being held in the municipality and only registered voters of such municipality may participate in the referendum. The question to appear on the ballot shall be "FOR THE MUNICIPAL ELECTRIC SYSTEM PROVIDING ADDITIONAL SERVICES" and "AGAINST THE MUNICIPAL ELECTRIC SYSTEM PROVIDING ADDITIONAL SERVICES".

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Section 7-52-603. (a)(1)(A) A municipal electric system shall establish a separate division to deliver any of the services authorized by this part. The division shall maintain its own accounting and record-keeping system. A municipal electric system may not subsidize the operation of the division with revenues from its power or other utility operations.

(B) A municipal electric system may lend funds, at a rate of interest not less than the highest rate then earned by the municipal electric system on invested electric plant funds, to acquire, construct, and provide working capital for the system, plant, and equipment necessary to provide any of the services authorized by this part; provided, however, such interest costs shall be allocated to the cost of such services.

(2) The division shall be subject to the terms and conditions of those types of provisions generally provided in existing or future pole attachment agreements, including without limitation, allocation of costs for rates, insurance, and other related costs, and the responsibility for make ready provisions, that are applicable to private providers of services provided by the division under this part.

(3) In response to facility installation, maintenance, or relocation requests made under a pole attachment agreement by a private provider of services provided by the division under this part, the municipal electric system shall provide the same response times and service quality as the municipal electric system provides for requests of the division for such services and shall provide non-discriminatory access to these facilities. Nothing in this subsection shall impair the rights of a municipal electric system under its pole attachment agreement with the private provider of services

(b) A municipal electric system providing any of the services authorized by this part shall fully allocate any costs associated with the services provided under this part to the rates for those services.

(c) A municipal electric system providing any of the services authorized by this part shall establish and charge rates that cover all costs related to the provision of such services.

(d) A municipal electric system shall charge or allocate as costs to the division the same pole rate attachment fee as it charges any other franchise holder providing the same service.

(e) Any fee imposed by the municipality on a private provider of cable services, shall also be allocated to the division.

Section 7-52-604. (a) The Comptroller shall adopt, after consideration of written comments submitted by any interested party, guidelines or procedures to establish appropriate accounting principles applicable to the division's affiliated transactions and cost allocation. The development of such guidelines or procedures shall not be deemed a rule-making proceeding under the Administrative Procedures Act.

(b) A municipal division providing the services authorized by this part is subject to a finance and compliance audit under the provisions of Section 6-56-105, which audit

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shall be conducted in accordance with enterprise fund accounting principles under generally accepted accounting principles.

(c) On or before June 30, 2005, the comptroller's office shall prepare a report to the General Assembly evaluating the operations of municipal electric systems offering services permitted by this Part which shall include a recommendation as to whether the authority to provide such services should be expanded, restricted or terminated.

Section 7-52-605. To the extent that it provides any of the services authorized by this part, a municipal electric system shall have all the powers, obligations, and authority granted entities providing similar services under applicable laws of the United States or the State of Tennessee or applicable municipal ordinances.

Section 7-52-606. (a) A municipal electric system providing any of the services authorized by this part shall make tax equivalent payments with respect to such services in the manner established for electric systems under part 3 of this chapter; provided, such payments shall not include amounts based on net system revenues as provided in Section 7-52-304(1)(B). For purposes of the calculation of such tax equivalent payments only, the system, plant, and equipment used to provide such services shall be considered an electric plant, and the revenues received from such services shall be considered operating revenues. The amount payable pursuant to this paragraph shall not exceed the amount that would otherwise be due from a municipality were it a private provider of such services paying ad valorem taxes.

(b) In addition to the requirement of subsection (a) and notwithstanding any other provision of law to the contrary, a division of the municipal electric system providing the cable services, internet services, two way video transmission or video programming services authorized by this part, is subject to payment to the appropriate units of government of an amount in lieu of the following taxes on that part of its revenues, plant and facilities dedicated or allocated to those services described in Tennessee Code Annotated, Section 7-52-601(a), to the same extent as if it were a private provider of such services:

- (1) Excise and franchise tax law under Title 67, Chapter 4, Parts 8 and 9;
- (2) Sales tax law under Title 67, Chapter 6; and
- (3) Local privilege tax law under Title 67, Chapter 4, Part 7.

Section 7-52-607. Any municipality authorized by this part to provide any of the services described herein shall have the power and is hereby authorized to borrow money, contract debts and issue its bonds or notes to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of a system or systems, or any part thereof, to provide any of such services, including the acquisition of land or rights in land and the acquisition and installation of all equipment necessarily incident to the provision of such services. Any bonds or notes authorized to be issued pursuant to this section shall be issued only in accordance with the procedures, requirements and limitations set forth in Title 7, Chapter 34, or Title 9, Chapter 21, as elected by the municipality issuing the bonds or notes. All provisions of Title 7, Chapter 34, or Title 9, Chapter 21, relating to the authorization, issuance and

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sale of bonds or notes, the use and application of revenues of the system or systems being financed, powers to secure such bonds and notes, covenants and remedies for the benefit of bond or note holders with respect to such bonds or notes, validity and tax exemption with respect to such bonds or notes, and powers to refund and refinance such bonds or notes shall apply to any bonds or notes authorized hereunder and the system or systems financed thereby with the same effect as if such system or systems were a "public works", if proceeding under Title 7, Chapter 34, or a "public works project" if proceeding under Title 9, Chapter 21.

Section 7-52-608. This part supersedes any conflicting provisions of general law, private act, charter or metropolitan charter provisions.

Section 7-52-609. A franchisee under Title 7, Chapter 59 operating in the service area of the municipal electric division providing services under this Part may bring a civil action for injunctive or declaratory relief for a violation under this Part, and may recover actual damages upon a showing of a willful violation under this Part. Jurisdiction and venue for such action shall be in the chancery court in the county where the alleged violation is occurring or will occur. Such actions shall be scheduled for hearing as a priority by the court.

Section 7-52-610. A division established by a municipal electric system to deliver any of the services authorized by this part shall not be considered a governmental entity for the purposes of the Tennessee Governmental Tort Liability Act, compiled in Title 29, Chapter 20.

SECTION 2. Tennessee Code Annotated, Section 7-59-102, is amended by adding the following new subsections:

() Any municipal electric system permitted to operate under the authority of Title 7, Chapter 52, Part 6, before delivering any cable services, two way video transmission or video programming shall obtain a franchise from the appropriate municipal governing body or county governing body.

() The franchising authority shall not employ terms more favorable or less burdensome upon a municipal electric system operating under the authority of Title 7, Chapter 52, Part 6 than those imposed by the franchising authority upon any private provider providing the same services within the franchising authority's jurisdiction. The franchising authority shall not impose or enforce any local franchise requirement on any such private provider, which is not also made applicable to such a municipal electric system, nor shall the franchising authority discriminate between such providers.

() Nothing contained in this section shall be interpreted to limit the authority of the franchising authority to collect franchise fees, control and regulate its streets and public ways, or enforce its powers to provide for the public health, safety, and welfare.

SECTION 3. Tennessee Code Annotated, Section 7-52-103, is amended by adding the following new subsections:

(c) In addition to the authority granted under otherwise applicable law, each municipality operating an electric plant has the power and is authorized within its service

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area and on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, may contract to establish a joint venture or other business relationship with one or more third parties to provide the services authorized by Section 7-52-601, provided that with respect to cable services at least one such third party shall be a current franchise holder that has been providing services in any state (either itself or its predecessor(s)) for not less than three years at the time of the establishment of the joint venture or other business relationship. Any such joint venture or other business relationship shall be subject to the provisions of Section 7-52-602 through 7-52-609.

(d) In addition to the authority granted under otherwise applicable law, each municipality operating an electric plant has the power and is authorized on behalf of its municipality, acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to establish a joint venture or any other business relationship with one or more third parties to provide related services, subject to the provisions of Sections 7-52-402 through 7-52-407. No contract or agreement between a municipal electric system and one or more third parties for the provision of related services that provides for the joint ownership or joint control of assets, the sharing of profits and losses, or the sharing of gross revenues shall become effective or enforceable until the Tennessee Regulatory Authority approves such contract or agreement on petition and after notice and opportunity to be heard has been extended to interested parties. Notwithstanding Section 65-4-101(a)(2) or any other provision of this code or of any private act, to the extent that any such joint venture or other business relationship provides related services, such joint venture or business relationship and every member of such joint venture or business relationship shall be subject to regulation by the Tennessee Regulatory Authority in the same manner and to the same extent as other certified providers of telecommunications services, including, without limitation, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in Section 65-4-101, but only to the extent necessary to effect such regulation and only with respect to the provision of related services. This provision shall not apply to any related service or transaction which is not subject to regulation by the Tennessee Regulatory Authority.

(e) For purposes of this Section, "related services" shall mean those services authorized by Section 7-52-401.

SECTION 4. Tennessee Code Annotated, Section 7-52-406 is amended by deleting subsection (b) in its entirety and inserting the following language as a new subsection (b):

(b) Nothing in this part or any private act, charter, metropolitan charter, or amendments thereto, shall allow a municipality, county, metropolitan government, department, board or other entity of local government to provide any service for which a license, certification, or registration is required under Title 62, Chapter 32, Part 3 or to provide pager service.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

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SECTION 6. A customer of a municipal electric system shall have a right of action to recover damages against such system pursuant to this act.

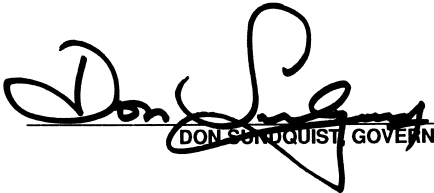
SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 27, 1999


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 17th day of June 1999


DON CONQUIST, GOVERNOR